

REMARKS

Claims 7-24 are pending in the current application. Claims 7, 15, 19 and 22-24 are independent claims.

Response to Advisory Action

On January 24, 2005, the Examiner issued a final Office Action where claims 7-15, 19 and 22-24 were rejected under 35 U.S.C. § 103(a) in view of the references Sen and Levenson. In response to the inclusion of Levenson in the 35 U.S.C. § 103(a) rejection, the Applicants timely filed a Declaration under 37 C.F.R. § 1.131 on March 11, 2005. In the Declaration, the declarants stated that the conception for the present invention predates the filing date of the Levenson reference. Further, pursuant to MPEP §715.07 (reproduced below), Applicants exercised their right to redact all dates on the original Exhibit A filed along with the Declaration. MPEP §715.07 states:

If the dates of the exhibits have been removed or blocked off, the matter of dates can be taken care of in the body of the oath or declaration.

When alleging that conception or a reduction to practice occurred prior to the effective date of the reference, the dates in the oath or declaration may be the actual dates or, if the applicant or patent owner does not desire to disclose his or her actual dates, he or she may merely allege that the acts referred to occurred prior to a specified date. However, the actual dates of acts relied on to establish diligence must be provided. See MPEP §715.07(a) regarding the diligence requirement. (MPEP §715.07) (Emphasis Added)

The above portion of the MPEP explicitly states that “if the applicant or patent owner does not desire to disclose his or her actual dates, he or she may merely allege that the acts referred to occurred prior to a specified date” (MPEP §715.07). Despite this guidance from the MPEP, the Examiner has issued an Advisory Action stating “the declaration under 37 C.F.R. § 1.131 is unacceptable because Exhibit A did not show the date that prior to

September 15, 2000, Levenson et al. (U.S. 6,791,945). Therefore, the Examiner retains the final rejection" (page 2 of the Advisory Action).

It is clear that the Examiner is in error in suggesting that the Applicants are required to show the dates on Exhibit A. As such, in view of MPEP §715.07, Applicants respectfully request that the Examiner withdraw Levenson as prior art and withdraw all art grounds of rejection including the Levenson reference.

Reconsideration and allowance of all claims is respectfully requested.

CONCLUSION

Accordingly, in view of the above amendments and remarks, reconsideration of the objections and rejections and allowance of each of claims 7-24 in connection with the present application is earnestly solicited.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Gary D. Yacura at the telephone number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

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By

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